

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	Criminal No. 7:19-cr-00522
	§	
DANIEL GARCIA	§	

**DEFENDANT'S MOTION FOR DISCLOSURE OF RECORDS
OR REPORTS RELATING FACTS OR DATA UNDERLYING EXPERT OPINIONS
AND INCORPORATED MEMORANDUM OF LAW**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES DANIEL GARCIA, who by and through his undersigned counsel moves this Honorable Court to require the prosecutor to reveal to defense counsel any and all records and or reports relating facts or data which underlie "expert" opinions which the Government intends to elicit from witnesses at trial.

Accordingly, Defendant respectfully requests an order for production of the following:

MATERIALS RELIED UPON BY THE EXPERT FOR HIS OR HER OPINION:

1. Including any and all texts, treatises, memoranda or other writings reflecting the witnesses' knowledge, skill, experience, training, or education relevant to his or her expertise, and
2. Any and all reports, memoranda, testimony, notes, video or audio tape recordings relating to any prior cases or investigations in which the witness testified concerning his or her area of expertise or upon which the witness will rely in reaching an opinion relevant to his or her testimony.

As grounds therefore, Defendant would respectfully show the following:

UNDERLYING "FACTS AND DATA" DISCOVERABLE

The "underlying facts or data" which support the witnesses' "expert opinion" are at the very

least discoverable upon cross-examination. *See* Rule 705 of the Federal Rules of Evidence.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion.

(a) Disclosure of facts or data. The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

Accordingly, a citizen accused of crime must have equal access to the “underlying facts and data” on which a witness premises their “expert” opinion. The due process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution requires no less. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Wardius v. Oregon*, 412 U.S. 470 (1973).

If the Government insists upon offering such expert opinion testimony, this accused has a more compelling Sixth Amendment right to explore and test the basis for same on cross-examination. *See Davis v. Alaska*, 415 U.S. 308 (1974) [prohibition against cross-examination of prosecution witness regarding his probation for juvenile offense denial of confrontation on facts].

**STATEMENTS RELIED UPON BY "EXPERT" WITNESSES
ARE DISCOVERABLE AS HIS OR HER OWN UNDER RULE 26.2**

Furthermore, the "statements" of others which are relied upon by experts in gaining the "training" and "experience" upon which they base their testimony, have been "adopted" or "approved" that other person's statements for purposes of bringing such statements within the mandatory disclosure requirements of Rule 26.2 of the Federal Rules of Criminal Procedure.

Rule 26.2

Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by a witness that is signed or otherwise
adopted or approved by the witness . . .

Production of these materials pre-trial will obviate delays during trial to allow counsel to review them and conduct out of court investigation and preparation related to them. Federal Rule of Criminal Procedure 26.2(d) provides for a recess in proceedings for just this purpose. Providing counsel with the materials before trial is therefore in the interest of judicial economy. This Court should order their production pursuant to its supervisory powers.

CONCLUSION

WHEREFORE, pursuant to Rule 705 of the Federal Rules of Evidence, and the Due Process Clause of the Fifth and Fourteenth Amendment to the United States Constitution, and this Court's supervisory power to regulate its own processes the Defendant respectfully prays that this Honorable Court order the Government to produce the following:

1. Materials relied upon by the expert for his or her opinion, including any and all texts, treatises, memoranda or other writings reflecting the witnesses' knowledge, skill, experience, training, or education relevant to his or her expertise, and
2. Any and all reports, memoranda, testimony, notes, video or audio tape recordings relating to any prior cases or investigations in which the witness testified concerning his or her area of expertise or upon which the witness will rely in reaching an opinion relevant to his or her testimony.

Respectfully submitted,

/s/ Clay S. Conrad

CLAY S. CONRAD

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing memo/brief was electronically delivered to the Assistant United States Attorneys responsible for litigation of this case on March 17, 2020.

By: /s/ Clay S. Conrad
CLAY S. CONRAD

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that on March 17, 2020, I attempted to confer with Roberto Lopez, the Assistant U.S. Attorney responsible for litigation of this cause, and he was opposed to the relief requested.

By: /s/ Clay S. Conrad
CLAY S. CONRAD

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ORDER

The defendant DANIEL GARCIA's *Motion for Disclosure of Records Or Reports Relating Facts or Data Underlying Expert Opinions and Incorporated Memorandum of Law* is hereby GRANTED.

The Government is hereby ordered to produce the following:

1. Materials relied upon by the expert for his or her opinion, including any and all texts, treatises, memoranda or other writings reflecting the witnesses' knowledge, skill, experience, training, or education relevant to his or her expertise, and
2. Any and all reports, memoranda, testimony, notes, video or audio tape recordings relating to any prior cases or investigations in which the witness testified concerning his or her area of expertise or upon which the witness will rely in reaching an opinion relevant to his or her testimony

SIGNED at Houston, Texas, this the _____ day of _____, 2020.

UNITED STATES DISTRICT JUDGE